



# **Town of Underhill**

## **Development Review Board**

### **Conditional Use Review Findings & Decision**

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#### **CONDITIONAL USE REVIEW APPLICATION OF CHRIS WELLS & HEIDI McLAUGHLIN FOR A DIMENSIONAL WAIVER TO BUILD A UTILITY ROOM, DECK AND ROOF WITHIN THE PROPERTY'S SETBACKS**

In re: Chris Wells & Heidi McLaughlin  
28 Range Road (RA028)  
Underhill, VT 05489

Docket No. DRB-19-05

**Decision:** Approved with Conditions (see Section V for More Details)

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the conditional use review application of Chris Wells & Heidi McLaughlin for a dimensional waiver to build a utility room, deck and roof, which will be attached to the previously approved single-family dwelling (DRB-18-08), within the property's setbacks pertaining to property they own located at 28 Range Road (RA028) in Underhill, Vermont. While the hearing was warned to include a deck to be built within the setback, the Board notes the entirety of the proposed deck will satisfy the setback requirements, and therefore, is not required to be approved by this Board.

- A. On April 30, 2019, the applicants, Chris Wells & Heidi McLaughlin, submitted a conditional use review application for the abovementioned project. The application was accepted and determined to be complete shortly thereafter. A site visit was scheduled for Monday, June 3, 2019 at 6:00 PM, and the hearing was scheduled for Monday, June 3, 2019 at 6:35 PM.
- B. On May 2, 2019, notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
  - 1. RA023 – Anderson H. & Theresa A. Hunt Trustees, P.O. Box 167, Underhill Center, VT 05490
  - 2. RA026 – Brian & Christine Wichert, 26 Range Road, Underhill, VT 05489
  - 3. RA029 – Eric & Lori Gildemeister, 29 Range Road, Underhill, VT 05489
  - 4. RA030 – Nicholas F. Bosco & Amy S. Place, 30 Range Road, Underhill, VT 05489
  - 5. SO009 – Guy G. & Joan C. Kennedy, 9 South Hill, Underhill, VT 05489
  - 6. Applicant: RA028 – Chris Wells & Heidi McLaughlin, 493 Vermont Route 15, Underhill, VT 05489
- C. During the week of April 28, 2019, notice of the public hearing for the proposed conditional use review application was posted at the following locations:
  - 1. The Underhill Town Clerk's office;
  - 2. The Underhill Center Post Office; and

3. Jacobs & Son Market.

- D. On May 4, 2019, notice of public hearing was published in the *Burlington Free Press*.
- E. The scheduled site visit at the property's location (28 Range Road, Underhill, Vermont) commenced at 6:00 PM on June 3, 2019.
- F. Present at the site visit were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
  2. Board Member, Matt Chapek
  3. Board Member, Mark Green
  4. Board Member, Daniel Lee
  5. Board Member, Karen McKnight
  6. Board Member, Penny Miller

Municipal representatives and members of the public present during the site visit were:

7. Planning & Zoning Administrator, Andrew Strniste
  8. Applicant: Chris Wells (28 Range Road, Underhill, VT)
  9. Applicant: Heidi Wells (28 Range Road, Underhill, VT)
- G. The conditional use review hearing commenced at 6:35PM on Monday, June 3, 2019 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, VT.
- H. Present at the conditional use review hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chair
  2. Board Member, Matt Chapek
  3. Board Member, Mark Green
  4. Board Member Daniel Lee
  5. Board Member, Karen McKnight
  6. Board Member, Penny Miller

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Applicant, Chris Wells (28 Range Road, Underhill, VT)
  2. Applicant, Heidi McLaughlin (28 Range Road, Underhill, VT)
- I. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:
1. Applicant, Chris Wells
  2. Applicant, Heidi McLaughlin
- J. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

1. Exhibit A - Wells/McLaughlin Conditional Use Review Staff Report
2. Exhibit B - Wells/McLaughlin (RA028) Conditional Use Review Hearing Procedures
3. Exhibit C - Development Review Application
4. Exhibit D - Responses to Development Review Application Questions
5. Exhibit E - Zoning Permit Application (B-19-13)
6. Exhibit F - Notice to BFP
7. Exhibit G - Certificate of Service
8. Exhibit H - Floor Plan
9. Exhibit I - Wastewater System & Potable Water Supply Permit (WW-4-5222)
10. Exhibit J - Site Plan
11. Exhibit K - Wastewater System Details
12. Exhibit L - Site Plan with Waiver & Variance Limitations
13. Exhibit M - Site Plan with Proposed Additions & Limitations

No additional exhibits were distributed to the Board prior to the Monday, June 3, 2019 hearing, nor were any additional exhibits submitted into the record during the hearing.

All exhibits are available for public review in the Wells/McLaughlin Conditional Use Review file (RA028/DRB 19-05) at the Underhill Zoning & Planning office.

## **II. FACTUAL FINDINGS & CONCLUSIONS**

The Minutes of the June 3, 2019 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2011 *Underhill Unified Land Use and Development Regulations* (ULUDR) as amended through March 6, 2018:

### ***PROJECT SYNOPSIS***

The applicants, Chris Wells and Heidi McLaughlin, record owner of the property located at 28 Range Road (RA028) in Underhill, Vermont, are seeking conditional use approval to construct a utility room, deck and roof, which will be attached to the previously approved single-family dwelling (DRB-18-08), within the abovementioned property's setback requirements. While the hearing was warned to include a deck as being built within the setback, the Board notes the entirety of the deck will satisfy the setback requirements, and therefore, is not required to be approved by this Board. Since the applicants are proposing to construct a structure within the property's setback requirement, a dimensional waiver is required under Section 5.5.B. The entire property is located within the Rural Residential zoning district as defined under Article II, Table 2.4 of the ULUDR.

### ***ARTICLE II, ZONING DISTRICTS***

#### **A. ARTICLE II, TABLE 2.4 –RURAL RESIDENTIAL DISTRICT**

The Board finds the proposed project will meet the applicable dimensional standards under this district with the approval of the dimensional waiver, as explained below. In addition, the proposed utility room and roof are consistent with the zoning district's stated purpose of accommodating medium density development on land that has access to public roads (Range Road) where traditional development has taken place.

### **ARTICLE III, GENERAL REGULATIONS**

#### **A. SECTION 3.2 – ACCESS**

The Board finds that the subject property accesses Range Road, a Class III Town Highway. The applicants are not proposing to relocate the existing curb cut, nor will they be making any modifications to the existing driveway. While the existing driveway encroaches upon the property's south, side setback requirement (approximately six (6) feet), the applicants are not proposing to increase the degree of nonconformance, and therefore, the Board finds that the access way satisfies the requirements of this Section. The Board notes that the applicants DO NOT have to relocate the existing access way.

#### **B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the proposed utility room and roof will be attached to the previously approved single-family dwelling, which is the one principal structure on the lot. The proposed utility room and roof will encroach upon the west, rear property setback requirements, and therefore, requires a dimensional waiver. In accordance with Section 3.7.E.1, the Board finds that this approved waiver is to allow for the limited addition of a utility room and roof to the previously approved single-family dwelling (DRB-18-08).

The Board notes the existing lot fails to meet the minimum acreage requirement of 3.00 acres, as the lot is approximately 0.50 acres, and therefore, nonconforming. Upon completion, the setbacks as they relate to the proposed utility room and roof are:

- Front Property Line: >30 ft. (East)
- Side 1 Property Line: ~56 ft. (North)
- Side 2 Property Line: ~78 ft. (South)
- Rear Property Line: ~37 ft. (West)

The setback requirements for a principal structure within the Rural Residential District are 30 ft. from the front property line and 50 ft. from the side and rear property lines. Though the single-family dwelling will fail to meet the dimensional requirements, since the applicant has satisfied the requirements of Section 3.8, 3.9 and 5.5.B, as explained below, they are not prohibited from obtaining approval by this Board.

#### **C. SECTION 3.8 – NONCONFORMING LOTS**

The Board finds that the lot being reviewed as part of this application was legally in existence on the effective date of the *Underhill Unified Land Use & Development Regulations* (adopted on March 1, 2011 and amended through March 6, 2018). Therefore, the lot may be developed for the purposes allowed in the district in which the lot is located even though it does not conform to the minimum lot size requirements.

#### **D. SECTION 3.9 – NONCONFORMING STRUCTURES**

The Board finds that the applicants are constructing a utility room and roof onto the single-family dwelling, which will increase the degree of nonconformance more than what was previously approved as part of the applicants' recent Development Review Board application (DRB-18-08). Since parts of the utility room and the entirety of the roof will be within the west, rear property setback (see Exhibit N), a dimensional waiver is required per Sections 3.9.B and 5.5.B. See Section 5.5.B below in regard to the waiver analysis.

#### **E. SECTION 3.11 – OUTDOOR LIGHTING**

The Board finds that the outdoor lighting will be consistent with outdoor lighting associated with single-family dwellings. Any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.

**F. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two parking spaces as required per table 3.1.

**G. SECTION 3.14 – PERFORMANCE STANDARDS**

The Board finds that the applicants did not submit the requisite information to satisfy the requirements of Section 3.14; however, the Board finds that the applicants are proposing a use that is consistent with other uses in the area, and does not anticipate that the applicants will cause, create, or result in any of the situations identified in this section.

**H. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds that, while a groundwater source protection area encompasses the entirety of the lot the proposed project is exempt from review under Section 3.17.B since the additions will be part of the single-family dwelling.

**I. SECTION 3.18 – STEEP SLOPES**

The Board finds that there are no areas of steep slopes (15-25%) or very steep slopes (>25%) on the lot, and therefore, review and analysis under this Section is not required.

**J. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that there are no surface waters or wetlands on the lot, and therefore, review and analysis under this Section is not required.

**K. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

While a wastewater permit was not required for the proposed utility and roof, the Board finds that the applicants did obtain a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-5222) from the State of Vermont for the previously approved reconstruction of the single-family dwelling. As stated in the permit, an on-site shallow well and an on-site wastewater system have been approved to serve a two (2) bedroom single-family residence.

**ARTICLE V, DEVELOPMENT REVIEW**

**A. SECTION 5.1 – APPLICABILITY**

The Board finds that as part of Section 5.4.C of the *Unified Land Use & Development Regulations*, site plan review is required in addition to conditional use review required by Section 5.4.

**B. SECTION 5.3 – SITE PLAN REVIEW**

Section 5.3.A – Purpose: The Board finds that site plan review is required as part of conditional use review per Section 5.4.C.

Section 5.3.B – Standards: The Board has considered this section's standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the applicants submitted an adequate site plan depicting the proposed project. While the majority of the site features enumerated under Section 5.3.B.1 were not illustrated with great specificity, the Board was

able to obtain that information through other sources, such as the ANR Website, or the site features were not applicable to this application. As a result, the Board determined that the proposed utility room and roof would not adversely affect those enumerated features, and therefore, no mitigation measures are required under Section 5.3.B.2.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed utility room and roof is not contrary to the purpose and stated goals under Subsection b, Rural Residential, noting that the additions to the single-family dwelling will be consistent with the rural character of the area and traditional working landscape of the Rural Residential District, as well as the scale of the surrounding community.

Section 5.3.B.3 – Vehicle Access: The Board finds that the proposed utility room and roof do not require any parking in addition to that already serving the previously approved single-family dwelling (DRB-18-08), which will be accessed by an existing driveway on Range Road. The Board IS NOT requiring that the applicants relocate the existing access way.

Section 5.3.B.4 – Parking, Loading & Service Areas: The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required under Section 3.13.

Section 5.3.B.5 – Site Circulation: The Board finds that the proposed utility room and roof will be added to the previously approved single-family dwelling, which was found to be consistent with the site circulation patterns of a residential unit/lot.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that the applicants are not proposing any landscaping or screening techniques; however, the site layout and design will occur in a residential area that provides various techniques of landscaping and screening. Therefore, the Board finds that no additional screening and landscaping is mandated.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for more information.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicants shall utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the single-family dwelling.

**C. SECTION 5.4 – CONDITIONAL USE REVIEW**

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Sections 3.9.B and 5.5.B which require conditional use approval for the construction of a structure within a property's setback requirements. Specifically, a dimensional waiver under Section 5.5.B is required if the encroachment is more than 0%, but less than 50%, of the property's setback requirement. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4.B – General Standards: The Board finds that the conditions imposed herein will likely mitigate any potential undue adverse effects.

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the construction of a utility room and roof onto the previously approved single-family dwelling will not result in an increase in demand on community services and

facilities.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the proposed construction of a utility room and roof will not affect the character of the area, as the area is largely, or mostly, single-family dwellings. Furthermore, the Board makes the following findings relating to the location, scale, type, density and intensity of the proposed use as it relates to other buildings and uses in the area:

- **Location:** the property is located in the Rural Residential District, in an area largely containing compact development such as single-family dwellings.
- **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
- **Type:** the proposed utility room and roof would be attached to the single-family dwelling. Single-family dwellings are permitted uses within the Rural Residential District.
- **Density:** the proposed utility room and roof will not increase the density in the area affected.
- **Intensity:** the proposed utility room and roof will negligibly change the intensity of the area affected.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed utility room and roof will not result in an increase in traffic on roads and highways in the vicinity, nor will the proposed project create any congestion, since the proposed use is the same.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that this application is in conformance with the regulations in effect at the time of approval by this Board.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed utility room and roof will not interfere with any sustainable use of renewable energy resources.

Section 5.4.C – Site Plan Review Standards: The Board finds that site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

Section 5.4.D – Specific Standards: The Board finds that it may consider the Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed utility room and roof, which are to be attached to the single-family dwelling, are consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed utility room and roof, which are to be attached to the single-family dwelling, conform with the zoning districts and use standards as outlined above upon approval by this Board.

Section 5.4.D.3 – Performance Standards: The Board finds that the proposed project will comply with the performance standards set forth in Section 3.14 above.

Section 5.4.D.4 – Legal Documentation: The Board finds that this Section does not apply.

**D. SECTION 5.5 – WAIVERS & VARIANCES**

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The applicants have specifically asked for a dimensional waiver, which is approved, as explained below.

Any other conditions that have been waived have been noted in this decision. The Board makes no finding on any provision that was not explicitly waived, and has not been explicitly addressed.

Section 5.5.B – Dimensional Waivers: The Board, in association with Conditional Use Review, finds that it can reduce the minimum district setback requirements so long as the following information is obtained and following requirements are met:

Section 5.5.B.1 – Untitled: The applicants are proposing to construct a utility room and roof, which are to be attached to the north side of the previously approved single-family dwelling (DRB-18-08). The proposed utility room and roof will be located within the west, rear setback requirement. Due to the property's constraints (e.g. installed wastewater system and well, the lot's nonconformity), the applicants have presented an application illustrating the justification for a dimensional waiver.

Section 5.5.B.2 – Untitled: The Board finds that a waiver may be granted by the Board if one of the criteria enumerated under this Section is found to be true. The Board finds two of the criteria to be true: 1) the waiver is necessary to reasonably develop and use the pre-existing nonconforming lot, and 2) the waiver will allow for additions and/or improvements to a pre-existing nonconforming structure. The applicants are proposing to construct a utility room and roof onto the single-family dwelling.

Section 5.5.B.3 – Untitled: The Board finds that they may reduce the setback by no more than 50%, or in this case 25 feet. The applicants have presented an application illustrating that they are not anticipating to exceed this threshold.

Section 5.5.B.4 – Untitled: The Board finds based on clear and convincing evidence that the applicants have satisfied the elements enumerated in this subsection, all of which are required to be satisfied in order to grant a waiver:

Section 5.5.B.4.a – Element 1: No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.

The Board finds that the applicants are constrained by the proposed and approved wastewater system and well. The relocation of these systems would be unreasonable, and therefore, reconstructing the single-family dwelling in the footprint of the previous single-family dwelling, which is within the property's setback is justifiable.

Section 5.5.B.4.b – Element 2: The reduced setback is not contrary to public health safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.



The Board finds that the reduced setback is not contrary to the public health, safety and welfare; nor is contrary to the stated objectives and policies of the *Underhill Town Plan*, or the intent of these regulations.

Section 5.5.B.4.c – Element 3: The waiver represents the minimum setback reduction necessary to allow for the proposed development.

The Board finds that the approved waiver represents the minimum setback reduction necessary to allow for the proposed single-family dwelling.

Section 5.5.B.4.d – Element 4: Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.

The Board finds that there are no adverse impacts resulting from the reduced setbacks on adjoining properties, surface waters or wetlands. No mitigation measures are required as part of this decision.

Section 5.5.C – Variances: The Board finds that this Subsection does not apply, and therefore, review and analysis under this Subsection is not required.

#### ***ARTICLE VI, FLOOD HAZARD AREA REVIEW***

The Board finds that there are no Special Flood Hazard Areas, as illustrated on the requisite Flood Insurance Rate Maps, present on the lot, and therefore, review under Article VI is not required.

#### ***ARTICLE X, SPECIFIC USE STANDARDS***

##### **A. SECTION 10.3 – ZONING PERMITS**

##### Section 10.3.D – Effective Dates and Permit Renewals:

SECTION 10.3.D.1 – ZONING PERMITS: The Board finds that the permit issued as part of this decision will remain in effect for one year from the date of issuance. The applicants must substantially commence the permit within one year or the permit will become null and void. “Substantially commence” entails “initial site preparation; the installation of an access; and the installation of a foundation, water and/or wastewater system on-site.” (See Article XI for definition of “Substantially Commenced”)

SECTION 10.3.D.2 – DRB APPROVALS: The Board finds that conditional use approvals expire with the expiration of the zoning permit, and may only be extended as provided under Section 10.3.D.1. Once the approved uses or structures are established, the conditional use approval will remain in effect and run with the land. The Board finds that the applicants shall establish the uses within 24 months (2 years or) of the approval date of this decision (17 June 2021).

### **III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

The Board grants the following waivers/modifications:

- The Board approves the dimensional waiver, which therefore permits the applicants to encroach upon the south, side property setback requirement and the west, rear property

setback requirement. The applicants may only encroach upon the setback to the limits as portrayed on the submitted site plans (see Exhibit M), as amended during the hearing. The amended site plan allows the applicant to encroach upon the west, rear setback by 13 ft. Any deviation from the project presented as part of this application MAY require additional review by this Board (see Delegation of Authority Clause below).

- The applicants, or subsequent landowner(s), are/is not required to come before the Board for the construction of any out buildings, ancillary buildings, or accessory buildings, which would typically be required for any projects obtaining site plan review approval; instead the application for a building permit for those accessory-type buildings can be administratively reviewed and approved. However, the abovementioned structures must conform to the Regulations in effect at the time of the proposed projects.

#### **IV. DECISIONS AND CONDITIONS OF APPROVAL**

The Board is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the *Underhill Land Use & Development Regulations* and concludes that based on the evidence submitted and the above findings, the proposed dwelling reconstruction generally conforms to the aforementioned Regulations.

Based upon the findings above, and subject to the conditions below, the Development Review Board grants conditional use approval for the project presented in the application and at the hearing with the following conditions:

1. The Board finds that any outdoor lighting that is added as part of this proposed project shall be downward facing and shielded.
2. The Board finds that the applicants should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the single-family dwelling.
3. **Delegation of Authority.** The Board hereby delegates authority to the Zoning Administrator regarding the fulfillment of the proposed project. The Board empowers the Zoning Administrator to act on behalf of the Board regarding any proposed minor changes in the approval or proposed design. These changes are not limited in scope, but are left to the discretion of the Zoning Administrator on when to defer changes or modifications to the Board. In the event that a building envelope modification is required, the Board finds that the Zoning Administrator is empowered to make this modification so long as it conforms with the requirements under Section 7.8 of the *Underhill Unified Land Use & Development Regulations*.

Dated at Underhill, Vermont this 17 day of June 2019.



Charles Van Winkle, Chairperson, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends 17 July 2019.